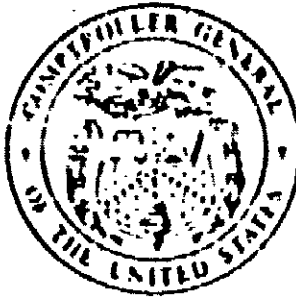


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DECISION



Kiedr...
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204981

DATE: March 4, 1982

MATTER OF: Kings Point Mfg. Co., Inc.

DIGEST:

1. Bidder cannot disregard specific instruction to make entry in blank space for total item price of solicitation merely because space contains agency supplied asterisk referring bidder to clause concerning limitation on progress payments.
2. Agency properly rejected bid as nonresponsive where it is not clear on the face of the bid that price bid included price of first article requirement, which bidder failed to bid.
3. Protest that solicitation should not have included first article requirement concerns an alleged impropriety apparent from the solicitation which must be filed prior to bid opening.
4. Allegation that protester received previous award on the basis of similarly completed solicitation is of no consequence since the Government is not bound under subsequent solicitation.
5. Low cost of protester's nonresponsive bid provides no basis to consider the bid.

Kings Point Mfg. Co., Inc. (Kings Point), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAK80-81-B-0267, issued by the Army for certain Net Controller Bags for Vinson Kits. Based on the following, we deny the protest.

The Army found the bid nonresponsive for failing to contain a bid price on two parts of the IFB's first article requirement. Kings Point believes that it was not required to bid the two parts because, while the IFB required bidders to fill in blanks on the pricing

UNDER ANY CIRCUMSTANCES. Failure to follow this instruction will render the bid nonresponsive.

"b. Further, if the solicitation/contract includes both First Article and Progress Payments provisions, the offeror is required to complete WITH A PRICE those Blocks 7 and/or 8 for First Article SLINs which have been left blank in the solicitation. If the offeror inserts 'N' or 'NSP' in such blocks, no progress payments will be made until First Article approval has been obtained * * *.

"c. In some cases, an asterisk or series of asterisks may be used to call your attention to additional information or blank spaces requiring completion on the form or elsewhere in Section B. In such cases, the asterisk is used similar to a numbered footnote and may indicate the requirement for completion of blank spaces for items such as Unit Price and Total Item Amount. DO NOT LEAVE THESE SPACES BLANK UNDER ANY CIRCUMSTANCES."

In addition, the IFB provides at Section M.31 that a bidder must quote on all items in the solicitation to be eligible for award.

The Army's requirement for first article was found under CLIN 0002 at Block 19 as follows:

"First Article Requirement: Fabrication and Testing of Bag, Net Controller [for VINSON Kits] as First Article IAW [in accordance with] Specification * * *, including test report as set forth in SLINS 0002AA and 0002AB, and Sections C and I. Quantity of First Article set forth in SLIN 0002AA."

The two associated SLINs had the following Block 15 name designations: "1ST Article" (0002AA); and "Test Report" (0002AB).

Kings Point states that the Block 7 space for each of these two SLINs was filled in with an "N" by the Army, and the Block 8 space contained an asterisk, also supplied by the Army. Kings Point argues that the net effect was

schedule in general, by separate provision the IFB impliedly deletes this requirement with respect to the particular blanks for the first article pricing schedule. Kings Point also contends that even if it was required to bid the omitted parts, its failure constituted a waivable, minor informality because Kings Point was clearly obligated by its bid to perform the first article work encompassed by the omitted parts. We believe that the rejection was proper because it is not clear that Kings Point was legally obligated to perform the first article requirement in the absence of the omitted prices.

The IFB contains standard form 33 which states:

"* * * the undersigned (Bidder) agrees * * * to furnish any or all items upon which prices are offered at the price set opposite each item * * *."

The IFB also contains two sets of pricing instructions. Section B.1, "Information to Bidders/Offerors," explains that the pricing schedule consists of two general categories; namely, contract line item (CLIN) and associated subline item (SLIN). For example, where the CLIN reads "0001," the SLIN would read "0001AA." Bidders are advised that the CLINs only function as common denominators for the accumulation of management data by the Government and that the requirements to be bid are set out in the associated SLINs and that all prices are to be entered at the SLIN level. Each SLIN consists of a group of numbered blocks setting out, among other things, the SLIN number (Block 4), the unit price (Block 7), the total item amount (Block 8), the item's name (Block 15), and descriptive data associated with the particular item (Block 19).

Section B.2, "Notice: Unit Price/Total Item Amount Blocks 7 and 8," details how bidders are to make their entries at the SLIN level and reads, in part, as follows:

"a. Except as stated in (b) below, in all SLINs Blocks 7 and 8 must be completed with either 'N' (Not Applicable), 'NSP' (Not Separately Priced), or a price. When 'N' or 'NSP' is placed in Block 7 by either the Government or the offeror, Block 8 must still be completed. DO NOT LEAVE BLOCK 7 OR 8 BLANK

to indicate that no price was to be entered under these SLINs. Rather, it was obligated to provide the first article requirement under the solicitation (without making any entry in Block 8) at the unit price of \$29.40, its bid for the Bags themselves. Because of this interpretation, Kings Point did not enter any price in Block 8 of either of these SLINs. Kings Point further contends that its bid is fully responsive to the solicitation because the first article requirement is mandatory under the IFB and, therefore, its bid necessarily includes the first article requirement. Kings Point seems to believe that the Block 7 unit price "N" entry by the Army serves to indicate either that the first article should not be priced, or that there is to be no charge for the first article requirements, in which case the Block 8 total item amount must be calculated as the extension of this no charge entry and, thus, should also be understood to mean no charge.

With respect to the above-cited warning that leaving Block 7 or 8 blank would render a bid nonresponsive, Kings Point argues that it is inapplicable because Section B.2(a) is prefaced by the proviso "except as stated in (b) below." Section B.2(b), above-cited, is specifically applicable, and Kings Point argues that the two sections must be read disjunctively. Thus, Kings Point argues that Section B.2(a) is inapplicable and the only possible penalty for the omission is that contained in Section B.2(b), no progress payments.

We find this interpretation misconstrues the obvious meaning of the provisions taken as a whole. Section B.2(a) provides a general warning, applicable to all of the SLINs, mandating one of three entries in Blocks 7 and 8, except as provided in Section B.2(b); Section B.2(b) adds a more restrictive requirement with respect to the SLINs relating to the first article. Thus, while an entry of "N," "NSP," or a price will satisfy the requirements of Section B.2(a), Section B.2(b) adds the restriction that, in order to obtain progress payments prior to obtaining first article approval, only a price entry (that is, not merely an entry of "N" or "NSP") will be sufficient. This may not be construed to obviate the requirement of the initial responsiveness provision. Moreover, Section B.2(c) further advises the bidders that where, as here, a block contains an asterisk, the asterisk may highlight the requirement for completion of the blank space. Both Block 8's contained an asterisk which referred the bidder to sections of the solicitations which related to limitations on progress payments. The Block 8's did not have an N or NSP inserted

by the Army and, therefore, were essentially left blank for the bidder to fill in. Accordingly, the terms of the IFB clearly required the bidders to fill in Block 8 of SLINS 0002AA and 0002AB in order to be responsive, which Kings Point failed to do.

Kings Point also argues that its failure to bid SLINS 0002AA and 0002AB may be waived as a minor informality because its bid as submitted clearly obligated Kings Point to perform the first article requirement. As indicated above, Kings Point contends that its unit price for the controller bags in SLIN 0001AA should be understood to include its price for the first article requirement. However, in this regard, in Air-A-Plane Corporation, B-200724, April 27, 1981, 81-1 CPD 324, our Office held, in virtually identical circumstances, that no such obligation is created. In fact, Air-A-Plane's case was substantially stronger than is the protester's case here. In Air-A-Plane, the solicitation form was almost identical to that used here, except that it did not contain the Section B.2(c) warning not to leave asterisked spaces blank. Moreover, in Air-A-Plane, there was a three-part first article requirement; the first SLIN consisted of the first article, the second and third consisted of the first article test and the test report. The protester completed Block 8 for the first article SLIN with a price and argued that its omission of Blocks 8 of the subsequent two SLINS was waivable because the requirements were subsumed in the requirement of the first article SLIN. Even under those circumstances, we found that there was insufficient information present concerning the total price of the first article to justify waiver of the IFB requirement to price the testing and reports. Accordingly, we find the cited case controlling and the Army was correct in not waiving the failure to bid on SLINS 0002AA and 0002AB.

While Kings Point argues that it should have been eligible for a waiver of first article testing because it had previously manufactured the item, we note that the IFB required first article testing and had no provision for a waiver. Kings Point further argues that the IFB should not have contained any first article requirement since Defense Acquisition Regulation (DAR) § 1-1902(b)(iv) (1976 ed.) provides that except in unusual procurements, first article approval tests shall not be required in contracts for supplies covered by complete and detailed technical specifications, unless the technical or performance requirements are so novel or exacting that

it cannot reasonably be anticipated that such supplies will meet the technical or performance requirements without first article approval.

In effect, Kings Point is alleging that the specifications are defective because of the first article requirement. This basis of protest is untimely. Kings Point did not file its protest until after bid opening, when it learned that it had been found nonresponsive. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981), require that protests based upon alleged improprieties in any type of solicitation apparent prior to bid opening be filed prior to bid opening.

Regarding Kings Point's allegation that it had previously bid and been awarded a contract under these circumstances, the supporting material which it submitted shows that this contention is factually incorrect. In the solicitation provided, Kings Point did enter a unit price in the SLIN for the first article in question, but did not enter a total price, unlike the present situation in which Kings Point made no entries in the first article SLIN price blanks. In any event, an improper acceptance of a bid in a prior contract would not have any binding effect on a procuring activity under a subsequent procurement. Airway Industries, Inc.; United States Luggage Corp., B-190093, August 14, 1978, 78-2 CPD 115.

Finally, Kings Point contends that it should receive the award because of the substantial monetary savings to the Government; thus making award to the next low bidder unreasonable. This argument is without merit because, once a bid has been determined to be nonresponsive, a lower price which it might provide is irrelevant because the bid cannot be considered for award. Lewis Drywall Residential, Inc., B-205022, October 28, 1981, 81-2 CPD 360.

We deny the protest.

Shirton J. Jowles
for Comptroller General
of the United States